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January 27, 2020

Sent via FOIA Online

Regional Freedom of Information Officer
U.S. Environmental Protection Agency, Region 10
Office of Regional Counsel, Air, Toxics, &
Information Law Branch
1200 6th Ave., Suite 155, Mail Stop 11-C07
Seattle, WA 98101

Re: Freedom of Information Act Request

Dear Region 10 FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Trustees for Alaska requests copies of the following documents in the possession of the U.S. Environmental Protection Agency (EPA) on behalf of Earthworks, National Parks Conservation Association, Northern Alaska Environmental Center, and The Wilderness Society (Groups) related to the Ambler Mining District Industrial Access Project (Ambler Road):

Any communications between EPA and outside parties (i.e., the State of Alaska and industry groups) regarding the Permit for the Ambler Road (POA-2013-00396) since July 2019.

For this request, the term “communications” should be given the broadest possible interpretation and refers to, but is not limited to, any and all documents, comments, any attachments to comments, reports, powerpoints, correspondence, emails, letters, notes (including “cuff notes”), recordings, telephone notes and logs, facsimiles, text messages, minutes, memoranda, assessments, and evaluations.

If possible we would prefer to receive the records in an electronic format. Pursuant to 5 U.S.C. § 552(a)(7)(A)–(B), we ask that you provide us with a tracking number for this request within 10 days. We also ask that you provide an estimated date by which the agency will complete action on the request.

Time is of the essence because the requesters plan to immediately use the requested information to engage and inform the public regarding the status of the National Environmental Policy Act and Clean Water Act section 404 permitting process for the Ambler Road. We understand the agencies intend to complete the environmental review of the project as soon as March 2020.

Fee Waiver Request

We also request a waiver of any fees associated with this request. Under FOIA, fee waivers are decided on a case-by-case basis and “[d]ocuments shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l). This fee waiver request meets these criteria. Disclosure of this information is in the public interest. It will contribute significantly to the public’s understanding of the EPA’s operations and activities, and it is not in the commercial interest of Groups.

1. The requested documents have “informative value” and will significantly contribute to the public understanding of the operations and activities of EPA and the Corps.

The information will contribute significantly to the public’s understanding of the EPA’s and U.S. Army Corps of Engineers’ (Corps) operations and activities. 40 C.F.R. § 2.107(l)(2). The FOIA request seeks copies of the comments and other potential documents that EPA received from outside parties related to the Corps’ Clean Water Act application for the Ambler Road. The request also encompasses EPA’s communications regarding this issue. There are many interested parties concerned about the construction of this 220-mile industrial road. Of particular concern are the potential impacts to hydrology, fish and wildlife, and habitat, as well as the impacts to subsistence users and residents of the region. The scale of this project and the potential for far-reaching impacts make the Corps’ ultimate permitting decision a matter of significant public interest. It is important for the public be able to understand the Corps’ decision making for this project and to have the opportunity to review the full range of comments received by the EPA from the public, commercial groups, and other State and/or federal agencies. As the agency tasked with overseeing the Corps’ implementation of the section 404 permitting program, EPA’s position and communications regarding this permit are particularly important for the public to have access to and understand. The requested records relate directly to EPA’s consideration of the Ambler Road and associated impacts to wetlands and hydrology. The requested information will shed light on the project and the information EPA is considering as part of this process.

These documents are sought for their “informative value,” not their intrinsic content. 40 C.F.R. § 2.107(l)(2)(ii). The focus of this request is documents that will significantly inform the public about the proposed project and about EPA’s role in the permitting of this project. This information will aid the public in understanding the potential impacts of the project, as a whole, and help the public to better understand the EPA’s and Corps’ decision-making process. Accordingly, disclosure of the requested information will contribute significantly to public understanding of the government’s process and procedure.

The requested information will provide meaningful insight into the operations of EPA and the Corps. *See* 40 C.F.R. § 2.107(l)(2)(i). The information will shed further light on the project and the EPA's process for evaluating and permitting any fill activities associated with the Ambler Road.

The requested documents are also likely to contribute to the understanding of a reasonably broad audience and is not information that is already in the public domain. *See* 40 C.F.R. § 2.107(l)(2)(ii)–(iii). The requested documents contribute to unknown facts about the project, namely what information and comments were submitted to and from EPA regarding the 404 permitting process. The requested information is not duplicative of any information currently available to the public. EPA has not published this information publicly and has not been willing to provide these documents absent a FOIA request. The requested documents would help the public to understand more details about the public's and other entities' concerns about the project. Disclosure of the information will enable Groups and the public to better understand what input and feedback the EPA has received as part of this permitting process, EPA's determinations regarding the Ambler permit to date, and educate the public about that information.

2. Groups have the intent and ability to distribute the requested information.

Disclosure will also contribute to the understanding of a reasonably broad audience and not just to Groups' understanding. Groups are nonprofit environmental organizations that work to preserve our nation's rich natural legacy through conservation and public engagement efforts, working in partnership with local communities, businesses, and volunteers. The requested documents will be shared with the public. Groups have the qualifications and expertise to evaluate and disclose the information in a manner that will inform a reasonably broad audience of persons interested in the subject. Groups will use this expertise to analyze and evaluate the information provided and provide these analyses to members and the general public. *Cf. W. Watersheds Proj. v. Brown*, 318 F. Supp. 2d 1036, 1040 (D. Idaho 2004).

Groups anticipate weighing in on and educating the public on future decisions regarding the Ambler Road. Groups can and will disseminate the requested information to a broad audience that includes local and national conservation groups, rural Native villages, community and citizen groups, statewide coalitions, hunting and fishing groups, and individual Alaskans. The information will be shared through various means, including newsletters, reports, articles, electronic action alerts, telephone calls, in-person meetings, and other formal and informal print, digital, and oral communications. This type of public dissemination is sufficient to warrant a fee waiver. *See* 40 C.F.R. § 2.107(l)(2)(iii); *W. Watersheds Proj.*, 318 F. Supp. 2d at 1041.

Disclosure will significantly contribute to public understanding of the Ambler Road project. The documents will help the public to better understand the proposal, and what information EPA considered in reviewing Alaska Industrial Development and Export Authority's application, information provided by the State of Alaska, and

associated Corps permit. As described above, Groups will disseminate the requested information to the public through a variety of communication methods. Dissemination of the requested information will significantly increase public understanding about the Ambler Road proposal. Therefore, disclosure will significantly contribute to public understanding of the subject and this factor is satisfied.

3. Groups have no commercial interest in the disclosure of the information.

Groups have no primary or secondary commercial interest in the dissemination of the requested information. Groups are nonprofit, public interest organizations that educate the public and work in partnership with diverse individuals and groups interested in Alaska's environmental policy issues. *See* 40 C.F.R. § 2.107(l)(3)(i). As described above, the requested information will be disseminated to educate the public and to further the public interest in environmental subjects, and will not be used for commercial purposes. Thus, Groups have no commercial interest that would be furthered by disclosure and this factor is satisfied.

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Based on the foregoing discussion, this fee waiver request meets the FOIA regulation requirements and a fee waiver should be granted. However, if EPA determines that the fee waiver should not be granted, we request that you contact us prior to incurring any fees to produce the FOIA request.

We also request that EPA respond to this request within twenty (20) working days, as required by law. If the agency chooses to withhold any documents from disclosure pursuant to FOIA exemptions, we request that it: (i) identify each such document with particularity (including title, subject, date, author, recipient, and parties copied); (ii) explain in full the basis on which non-disclosure is justified; and (iii) provide us with any portions of the documents which may be segregated and for which a specific exemption is not claimed. If you determine that these document or portions of the documents are exempt from release, please segregate those portions, identify and describe the withheld portions, specify the applicable exemption, and release the remainder of the document, if any.

If you have any questions regarding the scope of this request, please do not hesitate to contact me at bpsarianos@trustees.org. Thank you for your prompt attention to this request.

Sincerely,

s/ Bridget Psarianos
Staff Attorney
Trustees for Alaska